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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,365	06/15/2005	Diego Melpignano	IT 020029	4276

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BRIARCLIFF MANOR, NY 10510

EXAMINER

NGUYEN, MINH TRANG T

ART UNIT

PAPER NUMBER

4134

MAIL DATE

DELIVERY MODE

02/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/539,365

Applicant(s)

MELPIGNANO ET AL.

Examiner

MINH-TRANG NGUYEN

Art Unit

4134

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06/15/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/309)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date 06/15/2005

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1, 2, and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by *Lin et al.* [U.S Patent No. 6,804,222].

As Claim 1, *Lin et al.* disclose a system for transmitting real-time data between an access point and one or more first clients in a wireless network comprising an access point operating with a Transmission Control Protocol/Internet Protocol suite including the User Datagram Protocol (see Fig. 1, col. 5, lines 37-43 and Fig. 3; col. 10, line 66 - col. 11, line 55; col. 13, lines 29-35) and two or more clients associated with the access point to form a wireless network (see Fig. 3; col. 10, line 66 - col. 11, line 55), and a traffic shaper module held by the access point for delaying the transmission of at least some packets from the access point to other clients than the one or more first clients, at least when real-time data is transmitted between the access point and a first client (see Fig 1, ACE and Fig. 7, DSBM; Fig. 4, item 406; col. 11, lines 55 - col. 12, line 8; e.g., the transmission of discontinuous flow type packets is delayed or degraded in

order to make bandwidth available for the transmission continuous flow type packets or real-time data).

As Claim 2, *Lin et al.* disclose that the traffic shaper module forms part of the network interface layer in the TCP/IP protocol stack (see Fig 1, ACE and Fig. 7, DSBM; col. 13, lines 29-35).

As Claim 3, *Lin et al.* disclose that the traffic shaper module comprises elements adapted to examine a header of packets to be transmitted from the access point, if the packet is recognized as real-time data one of the one or more first clients, not to delay the transmission of said real-time data (see Fig 1, and Fig. 7; Fig. 4, items 401, 403, 407; col. 11, lines 55 - col. 12, line 8; col. 12, lines 32-54).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lin et al.* [U.S Patent No. 6,804,222] in view of *Packer* [U.S Patent No. 6,038,216].

As to claim 4, *Lin et al.* disclose all the claim limitations mentioned above with respect to claim 1.

Lin et al. do not expressly disclose if the packet is recognized as a TCP Acknowledgement to another client than the one or more first clients, to delay or discard the transmission of said TCP Acknowledgement.

Packer discloses a rate control device which recognizes a TCP Acknowledgement packet and delay TCP Acknowledgement (col. 3, lines 62-67).

Lin et al. and *Packer* are analogous art because they relate to controlling packet transmission in TCP/IP network environment.

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to incorporate the functions of rate control device taught by *Packer* into *Lin et al.*'s system. The suggestion/motivation would have been providing a bandwidth management function as suggested by *Packer* at column 3, lines 18-30.

As to claim 5, see similar rejection to claim 4.

As to claim 6, see similar rejection to claim 4.

As to claim 7, see similar rejection to claim 4. Furthermore, both *Lin et al.* and *Packer* disclose that a computer can perform the above functions (see *Lin et al.*, FIG. 1, and *Packer*, Fig. 1).

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 7 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 7 defines a record carrier with

descriptive material. While "functional descriptive material" may be claimed as a statutory product (i.e., a "manufacture") when embodied on a tangible computer readable medium, a record carrier embodying that same functional descriptive material is neither a process nor a product (i.e., a tangible "thing") and therefore does not fall within one of the four statutory classes of § 101. Rather, record carrier or "signal" is a form of energy, in the absence of any physical structure or tangible material.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nguyen [5,442,637], Blanco et al [6,249,530], Wiryaman et al.[7,149,222] relate to TCP/IP and delayed acknowledgement timer of TCP as a function of the propagation delay or round trip time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MINH-TRANG NGUYEN whose telephone number is (571)270-5248. The examiner can normally be reached on Monday to Friday 7:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derrick Ferris can be reached on 571-272-3123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MINH-TRANG NGUYEN/
Examiner, Art Unit 4134

/M. N./
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Supervisory Patent Examiner, Art Unit 4134